



MULTISTATE TAX COMMISSION

To: MTC Uniformity Standing Subcommittee
From: Maria Sanders, Chair
Helen Hecht, Uniformity Counsel
Subject: Minutes of September 17, 2020 Meeting – Approved
Date: November 9, 2020

- I. Welcome and Introductions – Tommy Hoyt (Uniformity Committee Chair), Texas, for Maria Sanders, Chair

Members of the Committee Present:

- Tommy Hoyt, Texas
- Gil Brewer, Washington
- Michael Hale, Kansas
- Michael Fatale, Massachusetts
- Ray Langenberg, Texas
- Laurie McElhatton, California
- Ashley McGhee, North Carolina
- Phil Skinner, Idaho
- Dee Wald, North Dakota

Others in Attendance:

- Beth Sosidka, AT&T
- Matt Tidwell, Alabama
- Frank Hales, Utah
- Joe Royston, Oregon
- David Epstein, Bloomberg
- Mark Brown
- Kevin Branscum
- Brooks Hemphill, North Carolina
- Michael Mertens, Iowa
- Richard Dobson, Kentucky
- Matt Largent, Washington
- Rachael Milne, Montana



- Mark Schoenfeld, Montana
- Christopher Russell, Indiana
- Leigh Powers, Kentucky
- Chris Barber, MTC
- Richard Cram, MTC
- Helen Hecht, MTC

II. Initial Public Comment – There was no initial public comment.

III. Review of the New Project Selection Process –

Mr. Hoyt gave a report on the new project selection process approved by the Uniformity Committee and noted that the subcommittee formed as part of this process would have regular meetings to consider any potential projects assigned by the committee.

IV. Staff Report on Developments Affecting Uniformity

Helen Hecht, MTC, gave a report for on how staff expects to collect and summarize potential projects for the uniformity committee. Anyone who has an idea for a potential uniformity project can raise it at the committee meeting or contact the staff of the MTC. (See below.)

V. Other New Business

There was no other new business.

VI. Adjourn

IV. EXAMPLE: Staff Report on Developments Affecting Uniformity

This is the report that will periodically go to the Uniformity Committee. We would expect that a draft of this report be shared with the subcommittee for input from its members. The proposed format of the report would be as follows:

- Legislative and regulatory developments in the area of taxes on multistate businesses – actions by states to address issues that the MTC has adopted models to address or may want to consider addressing.
- Litigation or audit issues that might benefit from legislative or regulatory changes.



- Other developments that could affect state taxation of multistate business activities—including developments affecting existing models.

EXAMPLE of the developments report:

Legislative and Regulatory Developments

Market-Based Sourcing: States continue to adopt market-based sourcing. Six have done so in the last two years (CO, IN, NC, NM, NJ, and VT). In addition to this being relevant for corporate income taxes, it is also essential for gross receipts taxes, which are increasingly being considered by state and local governments.

The issues where additional guidance might be helpful include:

- Sourcing of digital advertising revenues – or the methods for reasonable approximation;
- Sourcing/treatment of rebates or fees, particularly where there are complex multi-level marketing or distribution arrangements (e.g. digital content, pharmaceuticals, etc.); or
- Updating special industry rules—particularly broadcasting and publishing—to take into account issues in digital media.

Factor Presence Nexus: Roughly a dozen or so states have some type of sales-factor (at least) threshold but often it is not clear whether this is instead of or in addition to physical presence. (Our model does not create this uncertainty since it also has minimal payroll and property thresholds.) Some have suggested that the factor presence model might need to be updated.

Litigation or Audit Issues

Partnership/RAR and Audit Issues: States are moving to adopt provisions that will allow them to assess state tax on federal partnership audit adjustments. (The MTC currently has a work group that continues to address issues in this area.) Some states have also been looking at state-level partnership audits using an approach similar to the federal approach. (See Georgia's recent enactment and the system that Pennsylvania has had for some time.) States might benefit from sharing best practices in this area.

Other Developments



Business Interest: The question of how should states that conform to IRC §163(j) do so in the context of combined filing or separate filing continues to be raised. The IRS has issued guidance, as have a few states. This may be an issue where pulling together the existing guidance and highlighting the issues would be sufficient.